

**Introduced by Senator Cox**  
(Principal coauthor: Assembly Member Wolk)

February 22, 2006

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An act to amend Sections 20175.2 and 20133 of, and to add and repeal Article 5.5 (commencing with Section 20193) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1431, as introduced, Cox. Public contracts: design-build contracting: cities, counties and special districts.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law, until January 1, 2011, permits cities in the Counties of Solano and Yolo, with the approval of the city council, to enter into specified design-build contracts, as defined, in accordance with specified provisions.

This bill would instead permit any city, until January 1, 2017, with the approval of the city council, to enter into specified design-build contracts, as defined, in accordance with specified provisions, and would require the Legislative Analyst's office to report to the Legislature regarding the effectiveness of the design-build program.

Existing law, until January 1, 2011, authorizes certain counties, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions, and requires that contracts costing more than \$2,500,000 to be awarded by those counties to the lowest responsible bidder or by best value, as defined.

This bill would authorize, until January 1, 2017, any county, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions, would require that contracts costing more than \$2,500,000 be awarded by the county to the lowest responsible bidder or by best value, as defined, and would require the Legislative Analyst's office, on or before January 1, 2010, to report to the Legislature regarding the effectiveness of the design-build program.

This bill would also authorize, until January 1, 2017, any special district, as defined, upon approval of its governing body, to enter into design-build contracts, as defined, in accordance with specified provisions, would require that contracts costing more than \$2,500,000 to be awarded by the special district to the lowest responsible bidder or by best value, as defined, and would require the Legislative Analyst's office to report to the Legislature regarding the effectiveness of the design-build program.

This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 20175.2 of the Public Contract Code is  
2 amended to read:  
3 20175.2. (a) ~~(1) This section provides an alternative~~  
4 ~~procedure for bidding on building construction projects~~  
5 ~~applicable in cities in the Counties of Solano and Yolo upon~~  
6 ~~approval of the appropriate city council. A city, upon approval of~~  
7 ~~the city council, may utilize an alternative procedure for bidding~~  
8 ~~on building construction projects in the city and may award the~~  
9 ~~project using either the lowest responsible bidder or by best~~  
10 ~~value.~~

1     ~~(2) These cities may award the project using either the lowest~~  
2     ~~responsible bidder or by best value.~~

3     (b) (1) It is the intent of the Legislature to enable cities to  
4     utilize cost-effective options for building and modernizing public  
5     facilities. The Legislature also recognizes the national trend,  
6     including authorization in California, to allow public entities to  
7     utilize design-build contracts as a project delivery method. It is  
8     not the intent of the Legislature to authorize this procedure for  
9     transportation facilities, including, but not limited to, roads and  
10    bridges.

11    (2) The Legislature also finds and declares that utilizing a  
12    design-build contract requires a clear understanding of the roles  
13    and responsibilities of each participant in the design-build  
14    process. The Legislature also finds that the cost-effective benefits  
15    to cities are achieved by shifting the liability and risk for cost  
16    containment and project completion to the design-build entity.

17    (3) It is the intent of the Legislature to provide an alternative  
18    and optional procedure for bidding and building construction  
19    projects for cities.

20    (4) The design-build approach may be used, but is not limited  
21    to use, when it is anticipated that it will: reduce project cost,  
22    expedite project completion, or provide design features not  
23    achievable through the design-bid-build method.

24    (5) If a city council elects to proceed under this section, the  
25    city council shall establish and enforce, for design-build projects,  
26    a labor compliance program containing the requirements outlined  
27    in Section 1771.5 of the Labor Code, or it shall contract with a  
28    third party to operate a labor compliance program containing the  
29    requirements outlined in Section 1771.5 of the Labor Code. This  
30    requirement shall not apply to any project where the city or the  
31    design-build entity has entered into any collective bargaining  
32    agreement or agreements that bind all of the contractors  
33    performing work on the projects.

34    (c) As used in this section:

35    (1) “Best value” means a value determined by objectives  
36    relative to price, features, functions, and life-cycle costs.

37    (2) “Design-build” means a procurement process in which  
38    both the design and construction of a project are procured from a  
39    single entity.

1 (3) “Design-build entity” means a partnership, corporation, or  
2 other legal entity that is able to provide appropriately licensed  
3 contracting, architectural, and engineering services, as needed,  
4 pursuant to a design-build contract.

5 (4) “Project” means the construction of a building and  
6 improvements directly related to the construction of a building,  
7 but does not include streets and highways, public rail transit, or  
8 water resources facilities and infrastructure.

9 (d) Design-build projects shall progress in a four-step process,  
10 as follows:

11 (1) (A) The city shall prepare a set of documents setting forth  
12 the scope of the project. The documents may include, but are not  
13 limited to, the size, type, and desired design character of the  
14 buildings and site, performance specifications covering the  
15 quality of materials, equipment, and workmanship, preliminary  
16 plans or building layouts, or any other information deemed  
17 necessary to describe adequately the city’s needs. The  
18 performance specifications and any plans shall be prepared by a  
19 design professional who is duly licensed and registered in  
20 California.

21 (B) Any architect or engineer retained by the city to assist in  
22 the development of the project-specific documents shall not be  
23 eligible to participate in the preparation of a bid with any  
24 design-build entity for that project.

25 (2) (A) Based on the documents prepared in paragraph (1), the  
26 city shall prepare a request for proposals that invites interested  
27 parties to submit competitive sealed proposals in the manner  
28 prescribed by the city. The request for proposals shall include,  
29 but is not limited to, the following elements:

30 (i) Identification of the basic scope and needs of the project or  
31 contract, the expected cost range, and other information deemed  
32 necessary by the city to inform interested parties of the  
33 contracting opportunity, to include the methodology that will be  
34 used by the city to evaluate proposals, and specifically if the  
35 contract will be awarded to the lowest responsible bidder.

36 (ii) Significant factors which the city reasonably expects to  
37 consider in evaluating proposals, including cost or price and all  
38 nonprice related factors.

39 (iii) The relative importance of weight assigned to each of the  
40 factors identified in the request for proposals.

1 (B) With respect to clause (iii) of subparagraph (A), if a  
2 nonweighted system is used, the agency shall specifically  
3 disclose whether all evaluation factors, other than cost or price,  
4 when combined are:

- 5 (i) Significantly more important than cost or price.
- 6 (ii) Approximately equal in importance to cost or price.
- 7 (iii) Significantly less important than cost or price.

8 (C) If the city chooses to reserve the right to hold discussions  
9 or negotiations with responsive bidders, it shall so specify in the  
10 request for proposal and shall publish separately, or incorporate  
11 into the request for proposal, applicable rules and procedures to  
12 be observed by the city to ensure that any discussions or  
13 negotiations are conducted in good faith.

14 (3) (A) The city shall establish a procedure to prequalify  
15 design-build entities using a standard questionnaire developed by  
16 the city. In preparing the questionnaire, the city shall consult with  
17 the construction industry, including representatives of the  
18 building trades and surety industry. This questionnaire shall  
19 require information including, but not limited to, all of the  
20 following:

21 (i) If the design-build entity is a partnership, limited  
22 partnership, or other association, a listing of all of the partners,  
23 general partners, or association members known at the time of  
24 bid submission who will participate in the design-build contract,  
25 including, but not limited to, mechanical subcontractors.

26 (ii) Evidence that the members of the design-build entity have  
27 completed, or demonstrated the experience, competency,  
28 capability, and capacity to complete projects of similar size,  
29 scope, or complexity, and that proposed key personnel have  
30 sufficient experience and training to competently manage and  
31 complete the design and construction of the project, as well as a  
32 financial statement that assures the city that the design-build  
33 entity has the capacity to complete the project.

34 (iii) The licenses, registration, and credentials required to  
35 design and construct the project, including information on the  
36 revocation or suspension of any license, credential, or  
37 registration.

38 (iv) Evidence that establishes that the design-build entity has  
39 the capacity to obtain all required payment and performance  
40 bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596) settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance where an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance where the entity, its owners, officers, or managing employees defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the

manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The city shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) The city may use a design-build competition based upon best value and other criteria set forth in paragraph (2) of subdivision (d). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record. Each of these factors shall be weighted equally.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the city shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the city's second and third ranked design-build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship

1 training for any craft that has been deemed by the Department of  
2 Labor and the Department of Industrial Relations to be an  
3 apprenticeable craft in the five years prior to enactment of this  
4 act.

5 (vi) For the purposes of this paragraph, a bidder's "safety  
6 record" shall be deemed "acceptable" if their experience  
7 modification rate for the most recent three-year period is an  
8 average of 1.00 or less, and their average Total Recordable  
9 Injury/Illness rate and average lost work rate for the most recent  
10 three-year period does not exceed the applicable statistical  
11 standards for its business category, or if the bidder is a party to  
12 an alternative dispute resolution system, as provided for in  
13 Section 3201.5 of the Labor Code.

14 (e) (1) Any design-build entity that is selected to design and  
15 build a project pursuant to this section shall possess or obtain  
16 sufficient bonding to cover the contract amount for nondesign  
17 services and errors and omissions insurance coverage sufficient  
18 to cover all design and architectural services provided in the  
19 contract. This section does not prohibit a general or engineering  
20 contractor from being designated the lead entity on a  
21 design-build entity for the purposes of purchasing necessary  
22 bonding to cover the activities of the design-build entity.

23 (2) Any payment or performance bond written for the  
24 purposes of this section shall be written using a bond form  
25 developed by the city.

26 (f) All subcontractors that were not listed by the design-build  
27 entity in accordance with clause (i) of subparagraph (A) of  
28 paragraph (3) of subdivision (d) shall be awarded by the  
29 design-build entity in accordance with the design-build process  
30 set forth by the city in the design-build package. All  
31 subcontractors bidding on contracts pursuant to this section shall  
32 be afforded the protections contained in Chapter 4 (commencing  
33 with Section 4100) of Part 1. The design-build entity shall do  
34 both of the following:

35 (1) Provide public notice of the availability of work to be  
36 subcontracted in accordance with the publication requirements  
37 applicable to the competitive bidding process of the city.

38 (2) Provide a fixed date and time on which the subcontracted  
39 work will be awarded in accordance with the procedure  
40 established pursuant to this section.



1 (g) The minimum performance criteria and design standards  
2 established pursuant to paragraph (1) of subdivision (d) shall be  
3 adhered to by the design-build entity. Any deviations from those  
4 standards may only be allowed by written consent of the city.

5 (h) The city may retain the services of a design professional or  
6 construction project manager, or both, throughout the course of  
7 the project in order to ensure compliance with this section.

8 (i) Contracts awarded pursuant to this section shall be valid  
9 until the project is completed.

10 (j) Nothing in this section is intended to affect, expand, alter,  
11 or limit any rights or remedies otherwise available at law.

12 (k) (1) If the city elects to award a project pursuant to this  
13 section, retention proceeds withheld by the city from the  
14 design-build entity shall not exceed 5 percent if a performance  
15 and payment bond, issued by an admitted surety insurer, is  
16 required in the solicitation of bids.

17 (2) In a contract between the design-build entity and the  
18 subcontractor, and in a contract between a subcontractor and any  
19 subcontractor thereunder, the percentage of the retention  
20 proceeds withheld may not exceed the percentage specified in the  
21 contract between the city and the design-build entity. If the  
22 design-build entity provides written notice to any subcontractor  
23 who is not a member of the design-build entity, prior to or at the  
24 time the bid is requested, that a bond may be required and the  
25 subcontractor subsequently is unable or refuses to furnish a bond  
26 to the design-build entity, then the design-build entity may  
27 withhold retention proceeds in excess of the percentage specified  
28 in the contract between the city and the design-build entity from  
29 any payment made by the design-build entity to the  
30 subcontractor.

31 (l) Each city that elects to proceed under this section and uses  
32 the design-build method on a public works project shall submit to  
33 the Legislative Analyst's office before December 1, 2009, a  
34 report containing a description of each public works project  
35 procured through the design-build process that is completed after  
36 January 1, ~~2006~~ 2007, and before November 1, 2009. The report  
37 shall include, but shall not be limited to, all of the following  
38 information:

39 (1) The type of project.

40 (2) The gross square footage of the project.

1 (3) The design-build entity that was awarded the project.

2 (4) The estimated and actual project costs.

3 (5) A description of any written protests concerning any aspect  
4 of the solicitation, bid, proposal, or award of the design-build  
5 project, including the resolution of the protests.

6 (6) An assessment of the prequalification process and criteria.

7 (7) An assessment of the effect of retaining 5 percent retention  
8 on the project.

9 (8) A description of the Labor Force Compliance Program and  
10 an assessment of the project impact, where required.

11 (9) A description of the method used to award the contract. If  
12 the best value method was used, the report shall describe the  
13 factors used to evaluate the bid, including the weighting of each  
14 factor and an assessment of the effectiveness of the methodology.

15 (10) An assessment of the project impact of “skilled labor  
16 force availability.”

17 (11) An assessment of the most appropriate uses for the  
18 design-build approach.

19 (m) Any city that elects not to use the authority granted by this  
20 section may submit a report to the Legislative Analyst’s office  
21 explaining why the city elected not to use the design-build  
22 method.

23 (n) On or before January 1, 2010, the Legislative Analyst’s  
24 office shall report to the Legislature on the use of the  
25 design-build method by cities pursuant to this section, including  
26 the information listed in subdivision (l). The report may include  
27 recommendations for modifying or extending this section.

28 (o) This section shall remain in effect only until January 1,  
29 2011 2017, and of that date is repealed, unless a later enacted  
30 statute, that is enacted before January 1, 2011 2017, deletes or  
31 extends that date.

32 SEC. 2. Section 20133 of the Public Contract Code is  
33 amended to read:

34 20133. (a) ~~(1) This section provides for an alternative~~  
35 ~~procedure on bidding on building construction projects in excess~~  
36 ~~of two million five hundred thousand dollars (\$2,500,000)~~  
37 ~~applicable only in the Counties of Alameda, Butte, Contra Costa,~~  
38 ~~Del Norte, El Dorado, Fresno, Humboldt, Kings, Los Angeles,~~  
39 ~~Madera, Mariposa, Mendocino, Merced, Monterey, Napa,~~  
40 ~~Orange, Placer, Sacramento, San Diego, San Joaquin, San Luis~~

1 ~~Obispo, Santa Clara, Shasta, Siskiyou, Solano, Sonoma,~~  
2 ~~Stanislaus, Tulare, Yolo, and Yuba, upon approval of the~~  
3 ~~appropriate board of supervisors. A county, with approval of the~~  
4 ~~board of supervisors, may utilize an alternative procedure for~~  
5 ~~bidding on building construction projects in the county in excess~~  
6 ~~of two million five hundred thousand dollars (\$2,500,000) and~~  
7 ~~may award the project using either the lowest responsible bidder~~  
8 ~~or by best value.~~

9 ~~(2) These counties may award the project using either the~~  
10 ~~lowest responsible bidder or by best value.~~

11 (b) (1) It is the intent of the Legislature to enable these  
12 counties to utilize cost-effective options for building and  
13 modernizing public facilities. It is not the intent of the  
14 Legislature to authorize this procedure for transportation  
15 facilities, including, but not limited to, roads and bridges.

16 (2) The Legislature also finds and declares that utilizing a  
17 design-build contract requires a clear understanding of the roles  
18 and responsibilities of each participant in the design-build  
19 process. The Legislature also finds that the cost-effective benefits  
20 to the counties are achieved by shifting the liability and risk for  
21 cost containment and project completion to the design-build  
22 entity.

23 (3) It is the intent of the Legislature to provide an alternative  
24 and optional procedure for bidding and building construction  
25 projects for these counties.

26 (4) The design-build approach may be used, but is not limited  
27 to use when it is anticipated that it will: reduce project cost,  
28 expedite project completion, or provide design features not  
29 achievable through the design-bid-build method.

30 (5) If the board of supervisors elects to proceed under this  
31 section, the board of supervisors shall establish and enforce for  
32 design-build projects a labor compliance program containing the  
33 requirements outlined in Section 1771.5 of the Labor Code, or it  
34 shall contract with a third party to operate a labor compliance  
35 program containing the requirements outlined in Section 1771.5  
36 of the Labor Code. This requirement shall not apply to any  
37 project where the county or the design-build entity has entered  
38 into any collective bargaining agreement or agreements that bind  
39 all of the contractors performing work on the projects.

40 (c) As used in this section:

1 (1) “Best value” means a value determined by objective  
2 criteria related to price, features, functions, and life-cycle costs.

3 (2) “Design-build” means a procurement process in which  
4 both the design and construction of a project are procured from a  
5 single entity.

6 (3) “Design-build entity” means a partnership, corporation, or  
7 other legal entity that is able to provide appropriately licensed  
8 contracting, architectural, and engineering services as needed  
9 pursuant to a design-build contract.

10 (4) “Project” means the construction of a building and  
11 improvements directly related to the construction of a building,  
12 but does not include the construction of other infrastructure,  
13 including, but not limited to, streets and highways, public rail  
14 transit, or water resources facilities and infrastructure.

15 (d) Design-build projects shall progress in a four-step process,  
16 as follows:

17 (1) (A) The county shall prepare a set of documents setting  
18 forth the scope of the project. The documents may include, but  
19 are not limited to, the size, type and desired design character of  
20 the buildings and site, performance specifications covering the  
21 quality of materials, equipment, and workmanship, preliminary  
22 plans or building layouts, or any other information deemed  
23 necessary to describe adequately the county’s needs. The  
24 performance specifications and any plans shall be prepared by a  
25 design professional who is duly licensed and registered in  
26 California.

27 (B) Any architect or engineer retained by the county to assist  
28 in the development of the project specific documents shall not be  
29 eligible to participate in the preparation of a bid with any  
30 design-build entity for that project.

31 (2) (A) Based on the documents prepared in paragraph (1), the  
32 county shall prepare a request for proposals that invites interested  
33 parties to submit competitive sealed proposals in the manner  
34 prescribed by the county. The request for proposals shall include,  
35 but is not limited to, the following elements:

36 (i) Identification of the basic scope and needs of the project or  
37 contract, the expected cost range, and other information deemed  
38 necessary by the county to inform interested parties of the  
39 contracting opportunity, to include the methodology that will be

1 used by the county to evaluate proposals and specifically if the  
2 contract will be awarded to the lowest responsible bidder.

3 (ii) Significant factors which the county reasonably expects to  
4 consider in evaluating proposals, including cost or price and all  
5 nonprice related factors.

6 (iii) The relative importance of weight assigned to each of the  
7 factors identified in the request for proposals.

8 (B) With respect to clause (iii) of subparagraph (A), if a  
9 nonweighted system is used, the agency shall specifically  
10 disclose whether all evaluation factors other than cost or price  
11 when combined are:

12 (i) Significantly more important than cost or price.

13 (ii) Approximately equal in importance to cost or price.

14 (iii) Significantly less important than cost or price.

15 (C) If the county chooses to reserve the right to hold  
16 discussions or negotiations with responsive bidders, it shall so  
17 specify in the request for proposal and shall publish separately or  
18 incorporate into the request for proposal applicable rules and  
19 procedures to be observed by the county to ensure that any  
20 discussions or negotiations are conducted in good faith.

21 (3) (A) The county shall establish a procedure to prequalify  
22 design-build entities using a standard questionnaire developed by  
23 the county. In preparing the questionnaire, the county shall  
24 consult with the construction industry, including representatives  
25 of the building trades and surety industry. This questionnaire  
26 shall require information including, but not limited to, all of the  
27 following:

28 (i) If the design-build entity is a partnership, limited  
29 partnership, or other association, a listing of all of the partners,  
30 general partners, or association members known at the time of  
31 bid submission who will participate in the design-build contract,  
32 including, but not limited to, mechanical subcontractors.

33 (ii) Evidence that the members of the design-build entity have  
34 completed, or demonstrated the experience, competency,  
35 capability, and capacity to complete projects of similar size,  
36 scope, or complexity, and that proposed key personnel have  
37 sufficient experience and training to competently manage and  
38 complete the design and construction of the project, as well as a  
39 financial statement that assures the county that the design-build  
40 entity has the capacity to complete the project.

1 (iii) The licenses, registration, and credentials required to  
2 design and construct the project, including information on the  
3 revocation or suspension of any license, credential, or  
4 registration.

5 (iv) Evidence that establishes that the design-build entity has  
6 the capacity to obtain all required payment and performance  
7 bonding, liability insurance, and errors and omissions insurance.

8 (v) Any prior serious or willful violation of the California  
9 Occupational Safety and Health Act of 1973, contained in Part 1  
10 (commencing with Section 6300) of Division 5 of the Labor  
11 Code or the federal Occupational Safety and Health Act of 1970  
12 (Public Law 91-596), settled against any member of the  
13 design-build entity, and information concerning workers'  
14 compensation experience history and worker safety program.

15 (vi) Information concerning any debarment, disqualification,  
16 or removal from a federal, state, or local government public  
17 works project. Any instance where an entity, its owners, officers,  
18 or managing employees submitted a bid on a public works  
19 project and were found to be nonresponsive, or were found by an  
20 awarding body not to be a responsible bidder.

21 (vii) Any instance where the entity, its owner, officers, or  
22 managing employees defaulted on a construction contract.

23 (viii) Any violations of the Contractors' State License Law  
24 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
25 Business and Professions Code), excluding alleged violations of  
26 federal or state law including the payment of wages, benefits,  
27 apprenticeship requirements, or personal income tax withholding,  
28 or of Federal Insurance Contribution Act (FICA) withholding  
29 requirements settled against any member of the design-build  
30 entity.

31 (ix) Information concerning the bankruptcy or receivership of  
32 any member of the design-build entity, including information  
33 concerning any work completed by a surety.

34 (x) Information concerning all settled adverse claims, disputes,  
35 or lawsuits between the owner of a public works project and any  
36 member of the design-build entity during the five years preceding  
37 submission of a bid pursuant to this section, in which the claim,  
38 settlement, or judgment exceeds fifty thousand dollars (\$50,000).  
39 Information shall also be provided concerning any work  
40 completed by a surety during this period.

1 (xi) In the case of a partnership or other association, that is not  
2 a legal entity, a copy of the agreement creating the partnership or  
3 association and specifying that all partners or association  
4 members agree to be fully liable for the performance under the  
5 design-build contract.

6 (B) The information required pursuant to this subdivision shall  
7 be verified under oath by the entity and its members in the  
8 manner in which civil pleadings in civil actions are verified.  
9 Information that is not a public record pursuant to the California  
10 Public Records Act (Chapter 3.5, Division 7, Title 1 of the  
11 Government Code) shall not be open to public inspection.

12 (4) The county shall establish a procedure for final selection of  
13 the design-build entity. Selection shall be based on either of the  
14 following criteria:

15 (A) A competitive bidding process resulting in lump-sum bids  
16 by the prequalified design-build entities. Awards shall be made  
17 to the lowest responsible bidder.

18 (B) A county may use a design-build competition based upon  
19 best value and other criteria set forth in paragraph (2) of  
20 subdivision (d). The design-build competition shall include the  
21 following elements:

22 (i) Competitive proposals shall be evaluated by using only the  
23 criteria and selection procedures specifically identified in the  
24 request for proposal. However, the following minimum factors  
25 shall each represent at least 10 percent of the total weight of  
26 consideration given to all criteria factors; price, technical design  
27 and construction expertise, life cycle costs over 15 years or more,  
28 skilled labor force availability, and acceptable safety record.

29 (ii) Once the evaluation is complete, the top three responsive  
30 bidders shall be ranked sequentially from the most advantageous  
31 to the least.

32 (iii) The award of the contract shall be made to the responsible  
33 bidder whose proposal is determined, in writing, to be the most  
34 advantageous.

35 (iv) Notwithstanding any provision of this code, upon issuance  
36 of a contract award, the county shall publicly announce its award,  
37 identifying the contractor to whom the award is made, along with  
38 a written decision supporting its contract award and stating the  
39 basis of the award. The notice of award shall also include the  
40 county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, “skilled labor force availability” shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder’s “safety record” shall be deemed “acceptable” if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:



1 (1) Provide public notice of the availability of work to be  
2 subcontracted in accordance with the publication requirements  
3 applicable to the competitive bidding process of the county.

4 (2) Provide a fixed date and time on which the subcontracted  
5 work will be awarded in accordance with the procedure  
6 established pursuant to this section.

7 (g) The minimum performance criteria and design standards  
8 established pursuant to paragraph (1) of subdivision (d) shall be  
9 adhered to by the design-build entity. Any deviations from those  
10 standards may only be allowed by written consent of the county.

11 (h) The county may retain the services of a design professional  
12 or construction project manager, or both, throughout the course  
13 of the project in order to ensure compliance with this section.

14 (i) Contracts awarded pursuant to this section shall be valid  
15 until the project is completed.

16 (j) Nothing in this section is intended to affect, expand, alter,  
17 or limit any rights or remedies otherwise available at law.

18 (k) (1) If the county elects to award a project pursuant to this  
19 section retention proceeds withheld by the county from the  
20 design-build entity shall not exceed 5 percent if a performance  
21 and payment bond, issued by an admitted surety insurer, is  
22 required in the solicitation of bids.

23 (2) In a contract between the design-build entity and the  
24 subcontractor, and in a contract between a subcontractor and any  
25 subcontractor thereunder, the percentage of the retention  
26 proceeds withheld may not exceed the percentage specified in the  
27 contract between the county and the design-build entity. If the  
28 design-build entity provides written notice to any subcontractor  
29 who is not a member of the design-build entity, prior to or at the  
30 time the bid is requested, that a bond may be required and the  
31 subcontractor subsequently is unable or refuses to furnish a bond  
32 to the design-build entity, then the design-build entity may  
33 withhold retention proceeds in excess of the percentage specified  
34 in the contract between the county and the design-build entity  
35 from any payment made by the design-build entity to the  
36 subcontractor.

37 (l) Each county that elects to proceed under this section and  
38 uses the design-build method on a public works project shall  
39 submit to the Legislative Analyst's Office before December 1,  
40 2009, a report containing a description of each public works

1 project procured through the design-build process and completed  
2 after ~~November 1, 2004~~ *January 1, 2007*, and before November  
3 1, 2009. The report shall include, but shall not be limited to, all  
4 of the following information:

- 5 (1) The type of project.
- 6 (2) The gross square footage of the project.
- 7 (3) The design-build entity that was awarded the project.
- 8 (4) The estimated and actual length of time to complete the  
9 project.
- 10 (5) The estimated and actual project costs.
- 11 (6) A description of any written protests concerning any aspect  
12 of the solicitation, bid, proposal, or award of the design-build  
13 project, including the resolution of the protests.
- 14 (7) An assessment of the prequalification process and criteria.
- 15 (8) An assessment of the effect of retaining 5-percent retention  
16 on the project.
- 17 (9) A description of the Labor Force Compliance Program and  
18 an assessment of the project impact, where required.
- 19 (10) A description of the method used to award the contract. If  
20 best value was the method, the report shall describe the factors  
21 used to evaluate the bid, including the weighting of each factor  
22 and an assessment of the effectiveness of the methodology.
- 23 (11) An assessment of the project impact of “skilled labor  
24 force availability.”
- 25 (12) An assessment of the design-build dollar limits on county  
26 projects. This assessment shall include projects where the county  
27 wanted to use design-build and was precluded by the dollar  
28 limitation. This assessment shall also include projects where the  
29 best value method was not used due to dollar limitations.
- 30 (13) An assessment of the most appropriate uses for the  
31 design-build approach.
- 32 ~~(m) Any county named in subdivision (a) that elects to not use~~  
33 ~~the authority granted by this section may submit a report to the~~  
34 ~~Legislative Analyst’s Office explaining why the county elected~~  
35 ~~to not use the design-build method.~~
- 36 (n) On or before January 1, 2010, the Legislative Analyst shall  
37 report to the Legislature on the use of the design-build method by  
38 counties pursuant to this section, including the information listed  
39 in subdivision (l). The report may include recommendations for  
40 modifying or extending this section.

1 (o) This section shall remain in effect only until January 1,  
2 ~~2011~~ 2017, and as of that date is repealed, unless a later enacted  
3 statute, that is enacted before January 1, ~~2011~~ 2017, deletes or  
4 extends that date.

5 SEC. 3. Article 5.5 (commencing with Section 20193) is  
6 added to Chapter 1 of Part 3 of Division 2 of the Public Contract  
7 Code, to read:

8  
9 Article 5.5. Special Districts

10  
11 20193. (a) (1) Notwithstanding any other provision of law, a  
12 special district, with approval of its governing body, may utilize  
13 an alternative procedure on bidding on projects in the special  
14 district in excess of two million five hundred thousand dollars  
15 (\$2,500,000).

16 (2) A special district may award a project using either the  
17 lowest responsible bidder or by best value.

18 (3) For purposes of this article, “special district” means a  
19 special district as defined in subdivision (d) of Section 16271 of  
20 the Government Code.

21 (b) (1) It is the intent of the Legislature to enable special  
22 districts to utilize cost-effective options for building and  
23 modernizing public facilities.

24 (2) The Legislature also finds and declares that utilizing a  
25 design-build contract requires a clear understanding of the roles  
26 and responsibilities of each participant in the design-build  
27 process. The Legislature also finds that the cost-effective benefits  
28 to special districts are achieved by shifting the liability and risk  
29 for cost containment and project completion to the design-build  
30 entity.

31 (3) It is the intent of the Legislature to provide an alternative  
32 and optional procedure for bidding and building construction  
33 projects for special districts.

34 (4) The design-build approach may be used, but is not limited  
35 to use, when it is anticipated that it will: reduce project cost,  
36 expedite project completion, or provide design features not  
37 achievable through the design-bid-build method.

38 (5) If a special district elects to proceed under this section, the  
39 special district shall establish and enforce for design-build  
40 projects a labor compliance program containing the requirements

1 outlined in Section 1771.5 of the Labor Code, or it shall contract  
2 with a third party to operate a labor compliance program  
3 containing the requirements outlined in Section 1771.5 of the  
4 Labor Code. This requirement shall not apply to any project  
5 where the special district or the design-build entity has entered  
6 into any collective bargaining agreement or agreements that bind  
7 all of the contractors performing work on the projects.

8 (c) As used in this section:

9 (1) “Best value” means a value determined by objective  
10 criteria related to price, features, functions, and life-cycle costs.

11 (2) “Design-build” means a procurement process in which  
12 both the design and construction of a project are procured from a  
13 single entity.

14 (3) “Design-build entity” means a partnership, corporation, or  
15 other legal entity that is able to provide appropriately licensed  
16 contracting, architectural, and engineering services as needed  
17 pursuant to a design-build contract.

18 (d) Design-build projects shall progress in a four-step process,  
19 as follows:

20 (1) (A) The special district shall prepare a set of documents  
21 setting forth the scope of the project. The documents may  
22 include, but are not limited to, the size, type, and desired design  
23 character of the buildings and site, performance specifications  
24 covering the quality of materials, equipment, and workmanship,  
25 preliminary plans or building layouts, or any other information  
26 deemed necessary to describe adequately the special district’s  
27 needs. The performance specifications and any plans shall be  
28 prepared by a design professional who is duly licensed and  
29 registered in California.

30 (B) Any architect or engineer retained by the special district to  
31 assist in the development of the project specific documents shall  
32 not be eligible to participate in the preparation of a bid with any  
33 design-build entity for that project.

34 (2) (A) Based on the documents prepared in paragraph (1), the  
35 special district shall prepare a request for proposals that invites  
36 interested parties to submit competitive sealed proposals in the  
37 manner prescribed by the special district. The request for  
38 proposals shall include, but is not limited to, the following  
39 elements:

1 (i) Identification of the basic scope and needs of the project or  
2 contract, the expected cost range, and other information deemed  
3 necessary by the special district to inform interested parties of the  
4 contracting opportunity, to include the methodology that will be  
5 used by the district to evaluate proposals and specifically if the  
6 contract will be awarded to the lowest responsible bidder.

7 (ii) Significant factors which the special district reasonably  
8 expects to consider in evaluating proposals, including cost or  
9 price and all nonprice related factors.

10 (iii) The relative importance of weight assigned to each of the  
11 factors identified in the request for proposals.

12 (B) With respect to clause (iii) of subparagraph (A), if a  
13 nonweighted system is used, the special district shall specifically  
14 disclose whether all evaluation factors other than cost or price  
15 when combined are:

16 (i) Significantly more important than cost or price.

17 (ii) Approximately equal in importance to cost or price.

18 (iii) Significantly less important than cost or price.

19 (C) If the special district chooses to reserve the right to hold  
20 discussions or negotiations with responsive bidders, it shall so  
21 specify in the request for proposal and shall publish separately or  
22 incorporate into the request for proposal applicable rules and  
23 procedures to be observed by the special district to ensure that  
24 any discussions or negotiations are conducted in good faith.

25 (3) (A) The special district shall establish a procedure to  
26 prequalify design-build entities using a standard questionnaire  
27 developed by the special district. In preparing the questionnaire,  
28 the special district shall consult with the construction industry,  
29 including representatives of the building trades and surety  
30 industry. This questionnaire shall require information including,  
31 but not limited to, all of the following:

32 (i) If the design-build entity is a partnership, limited  
33 partnership, or other association, a listing of all of the partners,  
34 general partners, or association members known at the time of  
35 bid submission who will participate in the design-build contract,  
36 including, but not limited to, mechanical subcontractors.

37 (ii) Evidence that the members of the design-build entity have  
38 completed, or demonstrated the experience, competency,  
39 capability, and capacity to complete projects of similar size,  
40 scope, or complexity, and that proposed key personnel have

1 sufficient experience and training to competently manage and  
2 complete the design and construction of the project, as well as a  
3 financial statement that assures the special district that the  
4 design-build entity has the capacity to complete the project.

5 (iii) The licenses, registration, and credentials required to  
6 design and construct the project, including information on the  
7 revocation or suspension of any license, credential, or  
8 registration.

9 (iv) Evidence that establishes that the design-build entity has  
10 the capacity to obtain all required payment and performance  
11 bonding, liability insurance, and errors and omissions insurance.

12 (v) Any prior serious or willful violation of the California  
13 Occupational Safety and Health Act of 1973, contained in Part 1  
14 (commencing with Section 6300) of Division 5 of the Labor  
15 Code or the federal Occupational Safety and Health Act of 1970  
16 (Public Law 91-596), settled against any member of the  
17 design-build entity, and information concerning workers'  
18 compensation experience history and worker safety program.

19 (vi) Information concerning any debarment, disqualification,  
20 or removal from a federal, state, or local government public  
21 works project. Any instance where an entity, its owners, officers,  
22 or managing employees submitted a bid on a public works  
23 project and were found to be nonresponsive, or were found by an  
24 awarding body not to be a responsible bidder.

25 (vii) Any instance where the entity, its owner, officers, or  
26 managing employees defaulted on a construction contract.

27 (viii) Any violations of the Contractors' State License Law  
28 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
29 Business and Professions Code), excluding alleged violations of  
30 federal or state law including the payment of wages, benefits,  
31 apprenticeship requirements, or personal income tax withholding,  
32 or of Federal Insurance Contribution Act (FICA) withholding  
33 requirements settled against any member of the design-build  
34 entity.

35 (ix) Information concerning the bankruptcy or receivership of  
36 any member of the design-build entity, including information  
37 concerning any work completed by a surety.

38 (x) Information concerning all settled adverse claims, disputes,  
39 or lawsuits between the owner of a public works project and any  
40 member of the design-build entity during the five years preceding

1 submission of a bid pursuant to this section, in which the claim,  
2 settlement, or judgment exceeds fifty thousand dollars (\$50,000).  
3 Information shall also be provided concerning any work  
4 completed by a surety during this period.

5 (xi) In the case of a partnership or other association, that is not  
6 a legal entity, a copy of the agreement creating the partnership or  
7 association and specifying that all partners or association  
8 members agree to be fully liable for the performance under the  
9 design-build contract.

10 (B) The information required pursuant to this subdivision shall  
11 be verified under oath by the entity and its members in the  
12 manner in which civil pleadings in civil actions are verified.  
13 Information that is not a public record pursuant to the California  
14 Public Records Act (Chapter 3.5, Division 7, Title 1 of the  
15 Government Code) shall not be open to public inspection.

16 (4) The special district shall establish a procedure for final  
17 selection of the design-build entity. Selection shall be based on  
18 either of the following criteria:

19 (A) A competitive bidding process resulting in lump sum bids  
20 by the prequalified design-build entities. Awards shall be made  
21 to the lowest responsible bidder.

22 (B) A special district may use a design-build competition  
23 based upon best value and other criteria set forth in paragraph (2)  
24 of subdivision (d). The design-build competition shall include the  
25 following elements:

26 (i) Competitive proposals shall be evaluated by using only the  
27 criteria and selection procedures specifically identified in the  
28 request for proposal. However, the following minimum factors  
29 shall each represent at least 10 percent of the total weight of  
30 consideration given to all criteria factors; price, technical design  
31 and construction expertise, life cycle costs over 15 years or more,  
32 skilled labor force availability, and acceptable safety record.

33 (ii) Once the evaluation is complete, the top three responsive  
34 bidders shall be ranked sequentially from the most advantageous  
35 to the least.

36 (iii) The award of the contract shall be made to the responsible  
37 bidder whose proposal is determined, in writing, to be the most  
38 advantageous.

39 (iv) Notwithstanding any provision of this code, upon issuance  
40 of a contract award, the special district shall publicly announce

1 its award, identifying the contractor to whom the award is made,  
2 along with a written decision supporting its contract award and  
3 stating the basis of the award. The notice of award shall also  
4 include the district's second and third ranked design-build  
5 entities.

6 (v) For the purposes of this paragraph, "skilled labor force  
7 availability" shall be determined by the existence of an  
8 agreement with a registered apprenticeship program, approved by  
9 the California Apprenticeship Council, which has graduated  
10 apprentices in each of the preceding five years. This graduation  
11 requirement shall not apply to programs providing apprenticeship  
12 training for any craft that has been deemed by the Department of  
13 Labor and the Department of Industrial Relations to be an  
14 apprenticeable craft in the five years prior to enactment of this  
15 act.

16 (vi) For the purposes of this paragraph, a bidder's "safety  
17 record" shall be deemed "acceptable" if their experience  
18 modification rate for the most recent three-year period is an  
19 average of 1.00 or less, and their average Total Recordable  
20 Injury/Illness rate and average lost work rate for the most recent  
21 three-year period does not exceed the applicable statistical  
22 standards for its business category, or if the bidder is a party to  
23 an alternative dispute resolution system as provided for in  
24 Section 3201.5 of the Labor Code.

25 (e) (1) Any design-build entity that is selected to design and  
26 build a project pursuant to this section shall possess or obtain  
27 sufficient bonding to cover the contract amount for nondesign  
28 services, and errors and omission insurance coverage sufficient to  
29 cover all design and architectural services provided in the  
30 contract. This section does not prohibit a general or engineering  
31 contractor from being designated the lead entity on a  
32 design-build entity for the purposes of purchasing necessary  
33 bonding to cover the activities of the design-build entity.

34 (2) Any payment or performance bond written for the  
35 purposes of this section shall be written using a bond form  
36 developed by the special district.

37 (f) All subcontractors that were not listed by the design-build  
38 entity in accordance with clause (i) of subparagraph (A) of  
39 paragraph (3) of subdivision (d) shall be awarded by the  
40 design-build entity in accordance with the design-build process



1 set forth by the special district in the design-build package. All  
2 subcontractors bidding on contracts pursuant to this section shall  
3 be afforded the protections contained in Chapter 4 (commencing  
4 with Section 4100) of Part 1. The design-build entity shall do  
5 both of the following:

6 (1) Provide public notice of the availability of work to be  
7 subcontracted in accordance with the publication requirements  
8 applicable to the competitive bidding process of the special  
9 district.

10 (2) Provide a fixed date and time on which the subcontracted  
11 work will be awarded in accordance with the procedure  
12 established pursuant to this section.

13 (g) The minimum performance criteria and design standards  
14 established pursuant to paragraph (1) of subdivision (d) shall be  
15 adhered to by the design-build entity. Any deviations from those  
16 standards may only be allowed by written consent of the special  
17 district.

18 (h) The special district may retain the services of a design  
19 professional or construction project manager, or both, throughout  
20 the course of the project in order to ensure compliance with this  
21 section.

22 (i) Contracts awarded pursuant to this section shall be valid  
23 until the project is completed.

24 (j) Nothing in this section is intended to affect, expand, alter,  
25 or limit any rights or remedies otherwise available at law.

26 (k) (1) If the special district elects to award a project pursuant  
27 to this section, retention proceeds withheld by the special district  
28 from the design-build entity shall not exceed 5 percent if a  
29 performance and payment bond, issued by an admitted surety  
30 insurer, is required in the solicitation of bids.

31 (2) In a contract between the design-build entity and the  
32 subcontractor, and in a contract between a subcontractor and any  
33 subcontractor thereunder, the percentage of the retention  
34 proceeds withheld may not exceed the percentage specified in the  
35 contract between the special district and the design-build entity.  
36 If the design-build entity provides written notice to any  
37 subcontractor who is not a member of the design-build entity,  
38 prior to or at the time the bid is requested, that a bond may be  
39 required and the subcontractor subsequently is unable or refuses  
40 to furnish a bond to the design-build entity, then the design-build

1 entity may withhold retention proceeds in excess of the  
2 percentage specified in the contract between the special district  
3 and the design-build entity from any payment made by the  
4 design-build entity to the subcontractor.

5 (l) Each special district that elects to proceed under this  
6 section and uses the design-build method on a public works  
7 project shall submit to the Legislative Analyst's Office before  
8 December 1, 2009, a report containing a description of each  
9 public works project procured through the design-build process  
10 and completed after January 1, 2007, and before November 1,  
11 2009. The report shall include, but shall not be limited to, all of  
12 the following information:

13 (1) The type of project.

14 (2) The gross square footage of the project.

15 (3) The design-build entity that was awarded the project.

16 (4) The estimated and actual length of time to complete the  
17 project.

18 (5) The estimated and actual project costs.

19 (6) A description of any written protests concerning any aspect  
20 of the solicitation, bid, proposal, or award of the design-build  
21 project, including the resolution of the protests.

22 (7) An assessment of the prequalification process and criteria.

23 (8) An assessment of the effect of retaining 5-percent retention  
24 on the project.

25 (9) A description of the Labor Force Compliance Program and  
26 an assessment of the project impact, where required.

27 (10) A description of the method used to award the contract. If  
28 best value was the method, the report shall describe the factors  
29 used to evaluate the bid, including the weighting of each factor  
30 and an assessment of the effectiveness of the methodology.

31 (11) An assessment of the project impact of "skilled labor  
32 force availability."

33 (12) An assessment of the design-build dollar limits on special  
34 district projects.

35 This assessment shall include projects where the special district  
36 wanted to use design-build and was precluded by the dollar  
37 limitation. This assessment shall also include projects where the  
38 best value method was not used due to dollar limitations.

39 (13) An assessment of the most appropriate uses for the  
40 design-build approach.

1 (m) Any special district that elects not to use the authority  
2 granted by this section may submit a report to the Legislative  
3 Analyst's Office explaining why the special district elected to not  
4 use the design-build method.

5 (n) On or before January 1, 2010, the Legislative Analyst shall  
6 report to the Legislature on the use of the design-build method by  
7 special districts pursuant to this section, including the  
8 information listed in subdivision (l). The report may include  
9 recommendations for modifying or extending this section.

10 (o) This section shall remain in effect only until January 1,  
11 2017, and as of that date is repealed, unless a later enacted  
12 statute, that is enacted before January 1, 2017, deletes or extends  
13 that date.

14 SEC. 4. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the  
19 penalty for a crime or infraction, within the meaning of Section  
20 17556 of the Government Code, or changes the definition of a  
21 crime within the meaning of Section 6 of Article XIII B of the  
22 California Constitution.